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FINNEGAN HENDERSON FARABOW
GARRETT AND DUNNER
1300 I STREET N W
WASHINGTON DC 20005-3315

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OCT 18 2006

OFFICE OF PETITIONS

In re Patent No. 6,838,273 : **CORRECTED**
Suerbaum et al. : DECISION ON REQUEST FOR
Issue Date: January 4, 2005 : RECONSIDERATION OF
Application No. 09/015,078 : PATENT TERM ADJUSTMENT
Filed: January 29, 1998 : and
Atty Docket No. 2356-0073-01 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is in response to the NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT filed March 4, 2005. Patentees disclose that the revised patent term adjustment indicated on the patent should be thirteen (13) days not one hundred eighty-four (184) days.

As discussed herein, this corrected decision is written to revise the previous decision to remove entry of a period of reduction of 109 days and to correct the revised patent term adjustment from 0 days to 68 days.

The request for correction of the revised patent term adjustment indicated on the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of sixty-eight **(68)** days.

On January 4, 2005, the application matured into U.S. Patent No. 6,838,273, with a revised patent term adjustment of 184 days. On March 4, 2005, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 13 days, given that the patent issued on January 4, 2005.

It was previously determined that a review of the application history reveals that periods of reduction of 109 days and 87 days (in place of a reduction of 34 days) should be entered. However, upon further review, it is determined that a period of reduction of 109 days pursuant to 37 CFR § 1.704(c)(7) should not be entered for patentees' filing of a paper on December 10, 2001, correcting an omission in their response filed 109 days earlier on August 23, 2001. See Communication mailed November 15, 2001. A further review reveals that the paper filed December 10, 2001 disputed that there was any omission in the response filed August 23, 2001. Furthermore, the Office proceeded with examination of the application without any further filing in response to the communication mailed November 15, 2001.

The previous decision was correct that pursuant to 37 CFR § 1.704(b), a reduction of 87 days, not 34 days, should be entered for patentees' taking until November 14, 2003, to file a Notice of Appeal in response to the final Office action mailed May 19, 2003. The response after final Office action filed September 22, 2003 was not in compliance with § 1.113(c) and thus, should not have been used in calculating the period of reduction.

Further, 37 CFR § 1.703(a) provides in pertinent part that:

The period of adjustment under § 1.702(a) is the sum of the following periods:

(3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

As the Office action filed September 22, 2003 was not in compliance with § 1.113(c), the entry of a period of adjustment of 63 days is incorrect. A review of the record reveals no basis for concluding that the mailing of a Notice of Allowance on March 25, 2004 constituted examination delay within the meaning of 35 U.S.C. 154(b). The entry of the period of adjustment of 63 days has been removed.

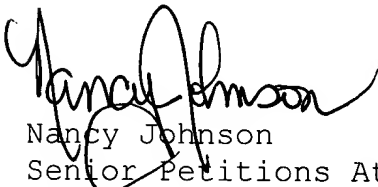
Although patentees state that they are only entitled to 13 days of patent term adjustment, a review of the record reveals no further basis for reduction. It is specifically noted that Office records show that the Issue Fee payment was received on June 24, 2004, within three months of the mailing of the Notice of Allowance mailed March 25, 2004. Thus, there is no basis for entry of a period of reduction in association with this filing.

In view thereof, the correct determination of PTA is sixty-eight (68) days.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by sixty-eight (68) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Day : Saturday
Date: 10/14/2006

PALM INTRANET

Time: 14:18:39

PTA Calculations for Application: 09/015078

Application Filing Date:	01/29/1998	PTO Delay (PTO):	338
Issue Date of Patent:	01/04/2005	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	154
Post-Issue Petitions:	0	Total PTA (days):	68
PTO Delay Adjustment:	-116		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
99	10/13/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	109		
98	09/27/2006	RECORD A PETITION DECISION OF GRANTED FOR PATENT TERM ADJUSTMENT AFTER ISSUE			
97	09/26/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		63	
96	06/28/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	34		
95	06/28/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		87	
94	06/28/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		109	
87.5	12/15/2004	PTA 36 MONTHS			
87	01/04/2005	PATENT ISSUE DATE USED IN PTA CALCULATION	72		81
86	11/16/2004	RECEIPT INTO PUBS			
85	11/12/2004	DISPATCH TO FDC			
84	11/12/2004	DISPATCH TO FDC			
83	11/12/2004	APPLICATION IS CONSIDERED READY FOR ISSUE			
82	06/24/2004	WORKFLOW - DRAWINGS FINISHED		120	
81	06/24/2004	ISSUE FEE PAYMENT VERIFIED			
80	07/27/2004	WORKFLOW - REQUEST FOR CPA - FINISH			
79	06/24/2004	WORKFLOW - DRAWINGS FINISHED		0	
78	10/25/2004	RECEIPT INTO PUBS			
77	10/21/2004	RECEIPT INTO PUBS			
76	09/02/2004	RECEIPT INTO PUBS			
75	08/23/2004	WORKFLOW - QUERY REQUEST - FINISH			
74	08/09/2004	RECEIPT INTO PUBS			
73	08/05/2004	WORKFLOW - QUERY REQUEST - BEGIN			
72	06/24/2004	ISSUE FEE PAYMENT RECEIVED			
71	06/02/2004	WORKFLOW - QUERY REQUEST - FINISH			

70	05/18/2004	WORKFLOW - QUERY REQUEST - BEGIN			
69	04/27/2004	SEQUENCE FORWARDED TO PUBS ON TAPE			
68	04/20/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
67	03/25/2004	MAIL NOTICE OF ALLOWANCE	63		54
66	03/24/2004	ISSUE REVISION COMPLETED			
65	03/24/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	03/24/2004	CASE DOCKETED TO EXAMINER IN GAU			
63	03/24/2004	NOTICE OF ALLOWABILITY			
62	02/11/2004	DATE FORWARDED TO EXAMINER			
61	02/03/2004	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
60	02/03/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
59	11/14/2003	NOTICE OF APPEAL FILED			
58	11/14/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
57	10/16/2003	MAIL ADVISORY ACTION (PTOL - 303)			
56	10/16/2003	ADVISORY ACTION (PTOL-303)			
55	10/02/2003	DATE FORWARDED TO EXAMINER			
54	09/22/2003	AMENDMENT AFTER FINAL REJECTION		34	51
53	09/22/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
52	09/22/2003	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
51	05/19/2003	MAIL FINAL REJECTION (PTOL - 326)			
50	05/19/2003	FINAL REJECTION			
46	02/07/2003	DATE FORWARDED TO EXAMINER			
45	01/30/2003	RESPONSE AFTER NON-FINAL ACTION			
44	10/30/2002	MAIL NON-FINAL REJECTION	203		40
43	10/30/2002	NON-FINAL REJECTION			
42	08/21/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
41	08/20/2002	DATE FORWARDED TO EXAMINER			
40	12/10/2001	RESPONSE TO A LETTER TO COMPLY WITH THE SEQUENCE RULES			
39	11/15/2001	MAIL LETTER REQUIRING CRF (UNREADABLE, NON-COMPLIANT, NOT SUBMITTED)			
38	11/14/2001	CRF DISKETTE UNREADABLE / DID NOT COMPLY / REQUIRED BUT NOT SUBMITTED			

37	09/28/2001	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
36	09/08/2001	DATE FORWARDED TO EXAMINER			
35	08/24/2001	FEE PAYMENT RECORDED (FEES FILED SEPARATELY E.G. NOT WITH ORIGINAL PAPERS, ETC).			
34	08/23/2001	PRELIMINARY AMENDMENT			
33	07/27/2001	WORKFLOW - REQUEST FOR CPA - BEGIN			
32	08/02/2001	MAIL NOTICE OF MISSING PARTS CPA			
31	08/02/2001	COMMUNICATION TO APPLICANT FOR MISSING PARTS CPA			
30	08/02/2001	DATE FORWARDED TO EXAMINER			
29	07/27/2001	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
28	07/27/2001	MAIL EXPRESS ABANDONMENT (DURING EXAMINATION)			
27	07/27/2001	EXPRESS ABANDONMENT (DURING EXAMINATION)			
26	07/27/2001	REQUEST FOR EXTENSION OF TIME - GRANTED			

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EXPLANATION OF PTA CALCULATION

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